

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Jane Doe, by and through her guardians,)
Gregory and Michelle Johnson, Gregory)
Johnson, Michelle Johnson, and John and)
Jane Does # 1-10,)

Plaintiff,)

V.

South Carolina Department of Social Services (SCDSS),
Kamerson Seth Cox,
Titsa M. Flesch, Healthy Minds, L.L.C.,
Debby Thompson, and John and Jane Roes
1-10,

Defendants.)

CIVIL ACTION NO.: 3:06-3663-JFA

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

TO: WILLIAM H. DAVIDSON, II, ESQUIRE AND KATE A. RICE, ESQUIRE,
ATTORNEYS FOR DEFENDANTS SOUTH CAROLINA DEPARTMENT OF SOCIAL
SERVICES AND DEBBY THOMPSON

Defendants filed a Motion to Dismiss Defendants South Carolina Department of Social Services and Debby Thompson in Her Official Capacity. Plaintiffs consent to some arguments in this motion but seek leave to amend their complaint pursuant to Fed.R.Civ.P. R. 15(c). A Consent Motion to Amend Plaintiffs' Complaint is filed concurrently with this Response.

These Defendants correctly assert that:

“I. As an agency of the State of South Carolina, the Defendants South Carolina Department of Social Services and its employee, Debby Thompson, in her official capacity, are immune from suit in the federal courts pursuant to the Eleventh Amendment.”¹

and Defendants also assert that:

¹ Memorandum in Support of Motion to Dismiss Defendants South Carolina Department of Social Services and Debby Thompson in Her Official Capacity, 3:06-cv-03663-JFA, p. 2.

“II. Defendants South Carolina Department of Social Servic[e]s and Debby Thompson, in her official capacity, are not “persons” against whom suit may be brought as required under 42 U.S.C. § 1983.”²

Should the Court grant Plaintiffs’ Consent Motion to Amend Plaintiffs’ Complaint, the South Carolina Department of Social Services would no longer a Defendant, and Debbie Thompson would no longer be sued in her “Official Capacity.” These issues would then be moot and Plaintiffs would not be prejudiced by a dismissal on Eleventh Amendment grounds.

Finally, Defendants allege that:

“III. This Court lacks jurisdiction over the Defendant South Carolina Department of Social Services where the Plaintiffs have failed to properly serve this Defendant.”³

The Department of Social Services is no longer a Defendant in this suit and therefore the issue of service of process is now moot.

Plaintiffs, after filing the Consent Motion to Amend Plaintiffs’ Complaint now respond to Defendants’ Motion to Dismiss ask the Court to deny Defendants’ Motion to Dismiss as the issues Defendants raise are now moot.

Respectfully submitted,

The Butcher Law Firm, PA

s//Robert J. Butcher

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² Memorandum in Support of Motion to Dismiss Defendants South Carolina Department of Social Services and Debby Thompson in Her Official Capacity, 3:06-cv-03663-JFA, p. 3.

³ Memorandum in Support of Motion to Dismiss Defendants South Carolina Department of Social Services and Debby Thompson in Her Official Capacity, 3:06-cv-03663-JFA, p. 4.

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Camden, South Carolina
March 22, 2007